HANG JONG JUAN

v.

TAN YEO SOON

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
TS SINNATHURAY J
LP THEAN J
[CIVIL APPEAL NO. 40 OF 1984]
5 FEBRUARY 1985

TORT: *Quantum of damages - Injuries caused to brain arising from accident - Appeal against sum of judgment award - Onus on appellant to establish judgment award erroneous.*

The appellant is appealing against the judgment of Chua J, who assessed damages suffered by the appellant at $42,000 on the ground that it was too low.

The appellant who was nine at the time of the accident and thirteen at the date of the trial suffered injuries to the brain arising from an accident where he was knocked down by a motor cycle ridden by the respondent.

The expert testimony given at the trial indicated that on clinical examination there was no abnormality detected although a brain wave test showed severe disturbance in the region of the injury which is an indication that he stood a good chance of suffering from epileptic fits. The experts were of the opinion that it would not be dangerous for the appellant to take part in physical activities but if he does get fits he would be restricted from driving, working at heights or with fast moving machinery.

The respondent admitted to 80% liability.

Held:

[1] In an appeal against the quantum of damages it is settled law that the onus is on the appellant to establish plainly that the trial Judge's award was a wholly erroneous estimate.

[2] It was not shown during argument or in the judgment of the trial Judge that the risk of epilepsy was not taken into account.

[3] In all the circumstances it was quite impossible to say that the amount of $42,000 by way of general damages was a wholly erroneous estimate.

[Appeal dismissed.]

JUDGMENT

Wee Chong Jin CJ, TS Sinnathuray J, LP Thean J:

The Appellant, Hang Jong Juan, an infant, suing by his mother and next friend, Choo Sew Khim, appealed against the judgment of Chua J who assessed the general damages suffered by the appellant at $42,000. Briefly stated, the facts are these. On 24 October 1980 the infant was crossing Changi Road when he was knocked down by a motor cycle ridden by the respondent and suffered injury. On admission into hospital the same day an X-ray and CT-Scan showed he had a compound depressed skull fracture in the right parieto-occipital region. The fracture was surgically treated by removal of the depressed bone and repair of torn dura. He recovered well and was discharged from hospital on 1 December 1980. He was nine years old at the date of the accident and thirteen at the trial date.

After his discharge he received outpatient treatment. He had a left sided weakness. He was re-assessed on 3 March 1982 by Dr. Baratham, Senior Neuro-Surgeon of the hospital. He was said to have occasional headaches and poor memory. His school performance had worsened from 5th-7th position in his class before the accident to 30th position. On clinical examination, no abnormality was detected although the brain wave trace showed severe disturbance in the region of the injury which is an indication that he stood a good chance of suffering from epileptic fits.

On 27 October 1983 Dr. Nei, a consultant neurologist, examined the appellant at the request of the resondent's solicitors. In his report he said that the appellant had residual deficits, namely (1) Left hemiparesis with moderate disability particularly in performance of skilled movements with the left hand; (2) Post traumatic headaches which are frequent and severe; (3) Poor academic performance for one year after the injury but which had improved since 1982, and (4) significantly increased risk of epilepsy in later years. The risk was about 30%. On 14 March 1984 the appellant was again examined by Dr. Baratham who found that his condition had remained fairly static.

At the trial Dr. Baratham said that the appellant stood "a good chance of suffering from epileptic fits of the grandmal type". During a grandmal epileptic fit there would be twitching of one limb which would spread to one half of the body and finally involve the whole body. In the case of grandmal the patient would be treated by anti-convulsant drugs for a long period but not necessarily throughout his life. There are sometimes some minor side effects. He was of the opinion that it would not be dangerous for the appellant to take part in physical activities such as sports or games but if he does have fits he would be restricted from driving, working at heights or with fast moving machinery. In the appellant's case as there is no record of any fits he would not place any restriction on the kind of work he might do and if no fit occurs in the first five years the chance of him having fits would be small.

When cross-examined he said that judging from the injury, the duration of the coma and the nature of the brain wave tracing, the appellant would have a 10% to 15% chance of getting fits and he would be keeping him on anti-convulsant drugs for at least another five years. He said it was difficult to assess the damage to the appellant's mental abilities but, as the head injury was severe, it could have resulted in a reduction of mental ability. The left sided weakness was very minimal and the appellant could run and jump.

The respondent who admitted to 80% liability did not call any witness and relied on Dr. Nei's report. The trial Judge assessed damages for pain and suffering and loss of amenities at $25,000; for future medical attention at $2,000 and for loss of earning's capacity at $15,000 and gave judgment for the appellant for $33,600, being 80% of the total assessment of $42,000.

The appellant appealed on the ground that the assessment of $42,000 was too low. It was argued that the Judge gave too much weight to the evidence that the appellant had, up to the date of trial, not suffered any fits and had failed adequately to take into account the probability of the appellant getting fits in the future. It was also argued that the Judge had failed to take into account the kind of awards for similar injuries and the fall in the value of money. We dismissed the appeal and now give our reasons.

In an appeal against the quantum of damages, it is settled law that the onus on the appellant is a heavy one and it must be established plainly that the trial Judge's award was a wholly erroneous estimate. In this case the amount assessed for general damages was $42,000 and on the facts it must be very much a matter of estimation and in the realm of guesswork

rather than arithmetical calculation. It had not been shown to us during the argument nor was there any indication in the judgment that the learned Judge failed to appreciate or to take into account the risk of epilepsy of the grandmal type developing. On the medical evidence the risk was 30% according to Dr. Nei, who was not called as a witness and 10 to 15% according to Dr. Baratham who treated the appellant. In all the circumstances we were of the opinion that it was quite impossible for us to say that the amount of $42,000 by way of general damages was a wholly erroneous estimate. We were also not persuaded that there was any discernible trend in previous awards for similar injuries. For these reasons we dismissed the appeal.

Also found at [1985] 1 CLJ 394

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